

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NICHOLAS PAUL BURGE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GARY PAUL DUPONT,

Respondent-Appellant,

and

APRIL DAWN BURGE,

Respondent.

In the Matter of ERIKA LEIGH BURGE and
NICHOLAS PAUL BURGE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

APRIL DAWN BURGE,

Respondent-Appellant,

and

GARY PAUL DUPONT,

Respondent.

UNPUBLISHED
October 14, 2008

No. 284532
Oakland Circuit Court
Family Division
LC No. 06-723677-NA

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Before: Meter, P.J., and Talbot and Murray, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to their children under MCL 712A.19b(3)(c)(i), (g), and (j).¹ We affirm, but remand for clerical correction of the trial court's order terminating respondents' parental rights.

The trial court did not clearly err by finding that statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The conditions of adjudication relating to respondent mother were her mental instability, drug abuse, and pending eviction. Although her mental stability was apparently improved by medication, respondent mother had not regularly attended therapy as required by her parent-agency agreement. She missed 94 drug screens since September 2006 and had two tests that were positive for adulterants. At the time of the termination trial, she did not have suitable housing. This evidence is clearly adequate to establish that the conditions of adjudication continued to exist. MCL 712A.19b(3)(c)(i).² The trial court also did not clearly err by finding that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children. *Id.* Respondent mother's failure to remedy the conditions of adjudication, despite the assistance of the agency, during the 16 months from the initial dispositional order until the termination hearing supplied convincing evidence that she would be unable to rectify the problems and deficiencies within a reasonable time considering the ages of the children. *Id.* The record supports the trial court's conclusion that, essentially, nothing had significantly changed for respondent mother since the case began.

Respondent father failed to provide proper care and custody for Nicholas, MCL 712A.19b(3)(g), when he declined to participate in services. "[A] parent's failure to comply with a parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). As a result of respondent father's noncompliance, his visits were suspended, and he did not see Nicholas from February 2007 until September 2007. The trial court did not clearly err by finding that there was no reasonable likelihood that respondent father would be able to provide proper care and custody

¹ The trial court order terminating parental rights indicates termination pursuant to MCL 712A.19b(3)(c)(ii). We note that this is a typographical error based on the order's reference to the petition for termination as seeking termination pursuant to MCL 712A.19b(3)(c)(i) and the trial court's discussion consistent with termination under that subsection. Therefore, we address this appeal as a termination under MCL 712A.19b(3)(c)(i).

² Any error in the trial court's reliance on this subsection with regard to respondent father is harmless because the evidence was sufficient to establish at least one other statutory ground for termination. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

for Nicholas within a reasonable time considering the child's age. MCL 712A.19b(3)(g). According to foster care worker Mattie Anderson, respondent father failed to consistently maintain contact with the agency, resulting in his failure to complete any requirements. Respondent father's failure to regularly provide drug screens, together with his positive screens early in the case, strongly suggests the continued use of illegal substances. Because respondent father did not maintain contact with the agency for sufficient time periods to obtain or complete any meaningful services, he did not adequately demonstrate any attempt to address his substance abuse problem. The record also contains no evidence of respondent father's income beyond his assertion that he worked for cash. Although the record strongly suggests that respondent father's ability to care for the child would be impaired by substance abuse and inadequate income, the most obvious problem was respondent father's lack of commitment or stability, as demonstrated by his failure to consistently participate or complete any requirements in the parent-agency agreement. The termination of his parental rights under MCL 712A.19b(3)(g) was not clearly erroneous.

Respondent father contends that termination was improper because the agency failed to provide adequate services directed toward reunification, a claim that ultimately relates to the sufficiency of the evidence for termination. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). Respondent father was provided with a service plan in February 2007, after the trial court determined that he had established paternity of Nicholas. From February 2007 until the filing of the petition for termination in December 2007, respondent father did not remain in contact with the agency long enough to complete any part of his service plan, and he would remain incommunicado for months on end. Respondent father complains in particular that he was not provided with counseling services. The petitioner did provide a referral to Easter Seals, but that agency determined that respondent father did not qualify for services. Foster care worker Whitney Carah testified that she then provided respondent father with a list of telephone numbers to call to obtain counseling but did not know if he pursued any of these optional services. These efforts appear minimal and under other circumstances might fall short of reasonable efforts toward reunification. But in the circumstances reflected in the record of this case, where it appears that the ability of the agency to secure services for respondent father was severely hampered by his inconsistent contact and long periods with no contact, we are unable to conclude that the efforts of the agency toward reunification were not reasonable.

Termination of respondent mother's parental rights under MCL 712A.19b(3)(g) was also appropriate. Respondent mother clearly failed to provide proper care and custody for the children by attempting suicide in the children's presence. MCL 712A.19b(3)(g). The same evidence demonstrating that it was unlikely that the conditions of adjudication would be rectified within a reasonable time considering the ages of the children, MCL 712A.19b(3)(c)(i), equally demonstrates that there is a significantly reduced probability that respondent mother would be able to provide proper care and custody for the children within a reasonable time considering their ages. MCL 712A.19b(3)(g). The same evidence establishing the existence of other statutory grounds for termination equally demonstrates that a reasonable likelihood exists that the child or children would be harmed if returned or placed within the care of either respondent. Therefore, the trial court did not clearly err by terminating the parental rights of both respondents under MCL 712A.19b(3)(j).

Finally, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Although there was a bond between Nicholas and respondent father, respondent father failed to ever demonstrate stability or commitment to the care of the child by consistently participating in services. Additional concerns exist regarding respondent father's substance abuse and questions pertaining to his financial ability to care for the child. With regard to respondent mother, the foster care worker observed limited attachment between respondent mother and the children. The children have been out of respondent mother's care since July 2006, the greater part of Nicholas's life and a substantial part of Erika's life. During that time respondent mother has not remedied the conditions that led to the removal of the children. Under these circumstances, the trial court did not clearly err in its best interests determination.

Affirmed. We remand this case to the trial court solely for the ministerial task of correcting the order to reflect termination of parental rights pursuant to MCL 712A.19b(3)(c)(i). We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Christopher M. Murray